IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3589 of 1995

KHIV SINGH & ORS.
V/S
BOARD OF REVENUE,AJMER & ORS

Mr. MS SINGHVI, for the appellant / petitioner

Mr. PC SHARMA, for the respondent

Date of Order : 21.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This petition has been filed by the petitioners seeking to challenge the order of the Board of Revenue Annex.1, and consequently also quashing Annex.2, the order of allotment made by the SDM. Some consequential reliefs have also been claimed.

The facts of the case, as pleaded in the petition are, that allotment of land was made in favour of respondents No.2 & 3 vide Annex.2, which was set aside by the Addl. Collector, exercising powers under Rule 14(4) of the Rajasthan Land Revenue (Allotment of land for Agricultural Purposes) Rules, 1970 (hereinafter referred to as 'the Rules'), vide Annex.3. Against that order, an appeal was filed before the appellate authority, which was dismissed by order Annex.4, and the revision against that judgment was allowed by judgment Annex.1. The petitioners

No.2 to 5 claimed to have purchased the land vide registered sale-deed Annex.5, and therefore they have filed the present writ petition alongwith petitioner Khiv Singh. According to the petitioners, the land comprised in Khasra No. 276/426 of village Jadri Tehsil Bali was the Khatedari land of petitioner Khiv Singh and his brothers Bhaboot Singh, Madho Singh and Jabar Singh. Then a mutation was sanctioned by the Tehsildar, Bali on 21.06.1969 (Annex.6) purporting to be an exchange of lands, and thereby the land of Khasra No. 276/426 was reduced to 19 bigha 15 biswas and 10 bigha 4 biswas and was entered in the name of State Govt. This 10 bigha 4 biswas is the land, which shall hereinafter be referred to as the land in question. This land is said to have been taken for the purpose of the air strip. On coming to know of this, Khiv Singh filed an appeal against Annex.6 before the Addl. Collector for cancellation, who set it aside and remanded the matter to Tehsildar by order dated 29.11.1985 (Annex.7) and the Tehsildar again ordered the land to be recorded back in the name of Bhabhoot Singh and Khiv Singh etc., vide Annex.8 dated 14.4.86. In the meantime, since requirement of air strip did not survive, the land in question was allotted to respondent No.2 & 3 under the provisions of the Rules. This also is claimed to have remained only a paper entry. Then, in 1986, petitioner Khiv Singh filed application under Rule 14(4) of the Rules, which was accepted by the learned Addl. Collector as noticed above, and that

cancellation was upheld in appeal, however, that was set aside and the allotment was upheld by the Board of Revenue vide Annex.1. In the meantime, proceedings under Sec.91 of the Rajasthan Land Revenue Act were taken against the respondents, and those proceedings were dropped by order dated 27.1.1987. Since the matter of mutation had been remanded, and the order dated 27.1.87 proceeded on the basis of mutation and allotment, the petitioner filed appeal against this order dated 27.1.87, which was allowed vide order dated 16.12.88 Annex.10, against this the respondent filed second appeal before the Revenue Appellate Authority. The Revenue Appellate Authority maintained the order Annex.10 vide judgment dated 9.3.90 Annex.11. Against that, the respondents filed revision before the Board of Revenue, which was decided vide order dated 24.8.95 Annex.12, the same was allowed, and the order of the Tehsildar dated 27.1.87 was maintained. In the meantime, petitioner Khiv Singh filed a suit against respondents No.2 to 4, in the Court of SDM, Bali under Sec.88, 188 of the Rajasthan Tenancy Act, which was decreed vide judgment dated 16.04.1990 (Annex.13). Against this decree, an appeal was filed by the respondents, which was dismissed vide judgment dated 30.12.1994 (Annex.15). In that suit, application under Sec.212 Tenancy Act was also filed, which was allowed and Receiver was appointed. Against that, appeal filed was dismissed; and a revision against that order was filed by the respondents, which was also

dismissed vide order Annex. 19 dated 24.08.1995, and the Board of Revenue directed the parties to appear before the trial Court on 26.09.1995, meaning thereby the learned trial Court was directed to decide the matter, obviously expeditiously. After decreeing of the suit, application of the petitioners for conversion of the land was accepted, and Pattas were granted by the SDM, being Annex.22 to 25.

In the above factual matrix, the impugned order has been challenged inter-alia on the ground that it has created unnecessary controversy, and is in excess of jurisdiction. Admittedly, the land in question was Khatedari of Khiv Singh, and there is not a valid order of exchange, and Khatedari cannot be extinguished without any legal order, either passed under the Rajasthan Tenancy Act or under the Land Acquisition Act. It was also contended, that mutation is only fiscal entry, which too has been set aside by the SDO, as such the mutation could not have taken away the rights of the petitioner, the land was Khatedari land, as such it was not available for allotment. Various other grounds have also been taken.

In my view, since the controversy involved in the present matter had been carried into multifarious litigations, may be rightly, inasmuch as, on the one hand the mutation of the land in question was challenged, on the other hand, allotment of land made in favour of the

respondents was challenged, and at the same time, a suit was also filed by the petitioner, for declaration of his Khatedari rights.

In this background, since the writ petition arises out of the order, adjudicating allotment/ cancellation thereof, I inquired from the learned counsel for the parties, as to what is the status of the other proceedings, and thereupon it was pointed out, that in matter of mutation No.70, regarding mutation of the land in the name of State Govt., an appeal was filed, wherein mutation was set aside, and matter was remanded. Against that remand order, an appeal was filed, which was dismissed and against that dismissal, a revision petition has been filed before the Board of Revenue, which is pending. Likewise, regarding the regular revenue suits filed by the petitioners, it was pointed out, that against the decree of the trial Court, appeal was filed, and on that being dismissed, an application under Order 41 Rule 19 was filed, which was also dismissed by the Revenue Appellate Authority and against that dismissal a revision petition has been filed before the Board of Revenue, which revision petition is also pending. Thus the position boils down to the effect, that the other two litigations are still pending before the Board of Revenue. A copy of the revision filed against the dismissal of the respondents' application under Order 41 Rule 19 CPC has been produced as Annex.R/13.

Likewise, copy of revision in the matter challenging Mutation No.70, has been filed as Annex.R/20.

I heard learned counsel for the parties for some time on 18.05.2007, and noticing some of the above facts, it was found, that whatever decision is arrived at in this writ petition, is likely to affect the matters pending before the Board of Revenue, one way or the other, and the learned counsel for the respondents sought time to take instructions. Today, the learned counsel informs, that his instructions are to argue with the matter on merits. Accordingly, the learned counsel for the parties were heard.

In my view, a look at the impugned order Annex.1 would show, that the order of the Board of Revenue proceeds on the basis, that as on the date when the land was allotted, it was Sivai Chak land and was rightly allotted to the respondents, as landless persons, and that, even if there be some technical flaws, there is no justification for setting aside the allotment after such a long time. Then, there is nothing to show that the allotment was obtained by practicing any fraud, or concealment of fact. Thus, the whole gravamen of the impugned order is, the assumption of validity of Mutation No.70, whereby the land in question was recorded as Sivai Chak, while as noticed above, the mutation has not acquired any finality, inasmuch

as the learned Collector set it aside, and remanded the matter to the Tehsildar for fresh inquiry, which remand order was affirmed in appeal, and is sub-judice before the Board of Revenue in revision. Likewise, a regular revenue suit was also filed by the petitioner which having been decreed by the trial Court, and that decree has been affirmed in appeal, and that matter is also pending before the Board of Revenue, obviously, the ultimate decision which may be arrived at in those two proceedings i.e. validity of recording of the land in the name of the State Govt., so also declaration of the petitioners' Khatedari rights as Khatedar, will have a direct and material bearing on the validity of the allotment made in favour of the respondents. Of course, in such circumstances, Board should have decided all the matters together, but then as appears from the documents available on record of this file, that two matters were not before the Board of Revenue, at the time of passing of order Annex.1, as this has been passed on 24.08.1995, while the mutation matter had been carried to the Board of Revenue in November 1996, and the suit litigation has been carried to Board of Revenue in the year 1997. Therefore, on that count, no fault can be found with the learned Board of Revenue: but then the fact does still remain, that three litigations are inextricably inter-related, and it would not be in the interest of justice, that independent findings are allowed to be recorded in the three litigations, lest inconsistent

findings, come into existence, and create an utter travesty of law.

In view of my above conclusions, without going into the merits of the order Annex.1, I think it appropriate to set it aside, and send the matter back to the Board of Revenue, to enable it to decide all the three matters together, by hearing them together, and taking an overall conspectus of the situation. Even at the cost of repetition, I make it clear, that while setting aside this order Annex.1, I am not arriving at any conclusion, this way or that way, on the merits, about the validity of the allotment.

Accordingly, the writ petition is partly allowed in the manner, that the order of Board of Revenue Annex.1 dated 24.08.1995 is set aside, and the matter is sent back to the Board of Revenue, to decide this revision afresh, alongwith other two revisions referred to above. In other words, the learned Board of Revenue is directed to decide all the three litigations, by hearing them together, by taking an overall comprehensive conspectus of the things.

The parties shall bear their own costs of this writ petition.

(N P GUPTA),J.

/jpa/